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17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**  
19 COLUMBIA PICTURES INDUSTRIES, Case No. CV 06-5578-SVW (JCx)  
INC., et al.,

20 Plaintiffs,

21 v.

22 GARY FUNG, et al.,

23 Defendants.

24  
25 **DECLARATION OF THOMAS  
KEARNEY IN SUPPORT OF  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT ON  
COPYRIGHT OWNERSHIP,  
CAUSATION, AND DIRECT  
INFRINGEMENT**

26 Hearing Date: October 28, 2013  
Time: 1:30 p.m.  
Pretrial Conference: October 28, 2013  
Trial Date: November 5, 2013

## **DECLARATION OF THOMAS KEARNEY**

I, Thomas Kearney, declare as follows:

1. I am an associate attorney with the law firm of Winston & Strawn LLP. I am a member in good standing of the Bar of the State of California, and am admitted to the bar of this Court. I make this declaration in support of Defendants Gary Fung and Isohunt Web Technologies, Inc.’s (“Defendants”) Opposition to Plaintiffs’ Motion for Summary Judgment on Copyright Ownership, Causation, and Direct Infringement (“Opposition”). I have personal knowledge of the facts set forth herein and am fully competent to testify thereto.

2. Despite repeated representations that they would produce documents on September 19, 2013, Plaintiffs produced copyright registrations and recordation documents for only about half of the 4,145 alleged works on that date.

3. On September 29, 2013, Plaintiffs produced a number of documents that they represented were additional chain of title documents, many of which were heavily redacted. On September 30, 2013, I sent an email to Plaintiffs' counsel requesting that Plaintiffs provide unredacted versions of these documents, but Plaintiffs have ignored that request. Plaintiffs still have refused to produce, or even confirm whether they would produce, unredacted documents.

4. Defendants requested discovery concerning Plaintiffs' allegations of direct infringement, including identification of incidences of direct infringement and information that would permit Defendants to determine whether particular dot-torrent files were uploaded to Defendants' websites by Plaintiffs' agents, or whether particular download events were performed by Plaintiffs or their agents. However, despite Plaintiffs' representation that they would provide documents on September 19, 2013, Plaintiffs failed to identify any direct infringements of their works until the day they filed the instant Motion.

5. On September 19, 2013, Plaintiffs provided a hard drive containing copies of dot-torrent files and purportedly corresponding downloaded content files to

1 Defendants. At a subsequent meet-and-confer, Plaintiffs' counsel informed me that  
2 each dot-torrent file could be matched to one or more content files by comparing the  
3 name of the dot-torrent file (its "BitTorrent ID" or "BT\_ID") to the name of a  
4 corresponding folder on the hard drive. For example, the first folder listed on the hard  
5 drive's directory was named "2224", which contained a .avi video file; the hard drive  
6 also contained a dot-torrent file named "2224.torrent." The second folder on the hard  
7 drive's directory was named "3630", which also contained a .avi video file; the hard  
8 drive also contained a dot-torrent file named "3630.torrent". Some of the folders on  
9 the hard drive contained sub-folders, in which case the relevant content file or files  
10 would be contained in a subfolder. For example, the sixth folder on the hard drive's  
11 directory was named "13261", which in turn contained a sub-folder named "Hercules  
12 movies", which contained several .avi video files; the hard drive also contained a dot-  
13 torrent file named "13261.torrent."

14 6. Not until 11:52 pm on September 29, 2013—the night before they filed  
15 the instant Motion—did Plaintiffs produce a list of the BitTorrent IDs that they  
16 claimed corresponded to the titles of their alleged works (Plaintiffs' "BT\_ID List").

17 7. Plaintiffs' BT\_ID List identifies dot-torrent file 2224 as corresponding to  
18 Plaintiffs' work "Legends of the Fall."

19 8. Plaintiffs produced a copy of a dot-torrent file named "2224.torrent" on  
20 September 19, 2013. But opening the dot-torrent file "2224.torrent" in a BitTorrent  
21 client causes it to begin attempting to download a copy of a work entitled "Buddha  
22 Bar – Vol 4."

23 9. The target file of the 2224.torrent file could not be downloaded.

24 10. Plaintiffs' BT\_ID List identifies dot-torrent file 3630 as corresponding to  
25 Plaintiffs' work "Seven Years in Tibet."

26 11. Plaintiffs produced a copy of a dot-torrent file named "3630.torrent" on  
27 September 19, 2013. But opening that dot-torrent file in a BitTorrent client causes it to  
28 begin attempting to download a copy of a work entitled "Transformers."

1       12. The target file of the 3630.torrent file could not be downloaded.

2       13. Plaintiffs' BT\_ID List identifies dot-torrent file 16170 as corresponding  
3 to Plaintiffs' work "Lords of Dogtown."

4       14. On September 28, 2013, I launched the dot-torrent file "16170.torrent"  
5 using the BitTorrent client uTorrent, which downloaded eighteen files from the  
6 Internet. I reviewed each of the files and determined that none of them is the movie  
7 "Lords of Dogtown." Indeed, none of the files is a video file. Rather, the downloaded  
8 files comprise sixteen mp3 audio files, an m3u file (which when opened plays each of  
9 the sixteen audio files in sequence), a .sfv file (which I understand contains  
10 information to verify that files are uncorrupted), and a .nfo file that contains textual  
11 information about the audio files. Launching the 16170.torrent file using a BitTorrent  
12 client results in a download of audio files identical to the content files Plaintiffs  
13 actually produced on their hard drive on September 19, 2013.

14       15. Plaintiffs' BT\_ID List identifies dot-torrent file 13261 as corresponding  
15 to the Disney movie "Hercules."

16       16. I reviewed each of the movies that Plaintiffs provided on their hard drive  
17 in the folder named "13261" and determined that each has a copyright notice stating  
18 that it is "Copyright (c) 1994 by Universal City Studios, Inc."

19       17. Even if Plaintiffs had produced documents sufficient to accurately  
20 identify their works—which they have not—Defendants would still have to review all  
21 of Plaintiffs' tens of thousands of content files, and over 2,000 dot-torrent files, to  
22 determine whether there exist other discrepancies similar to those described above,  
23 and whether each of Plaintiffs' nearly 4,000 alleged works is actually accounted for in  
24 Plaintiffs' list of purported infringements.

25       18. Plaintiffs produced *additional* documents, including additional dot-  
26 torrent files and allegedly corresponding content files, the day *after* they filed their  
27 Motion, leaving Defendants less than a week to analyze and respond to Plaintiffs'  
28 claims.

1 I declare under penalty of perjury that the foregoing is true and correct.  
2  
3 Dated: October 7, 2013                   /s/ Thomas J. Kearney  
4    Thomas J. Kearney  
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